



DA #11
PATENT
Application Serial No. 09/904,179
Attorney Ref. No. 050US1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Patent Application of)
Dan Ahlgren) Group Art Unit: 3751
App. Ser. No. 09/904,179)
Filed: July 11, 2001) Examiner: A. Ramana
For: STACKABLE INTERLOCKING)
INTERVERTEBRAL)
SUPPORT SYSTEM)

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450. on this date:

Date: November 3, 2003

Signature: _____

Printed Name: Jonathan D. Spangler

RENEWED PETITION UNDER 37 CFR 1.137(b)

Mail Stop: Petition
Commissioner for Patents
P.O. Box 1450

Alexandria, VA 22313-1450

11/18/2003 AKELLEY 00000062 502040 09904179

01 FC:2251 55.00 DA

Dear Sir or Madam:

Adjustment date: 11/18/2003 AKELLEY
11/12/2003 SLUANG1 00000062 502040 09904179
01 FC:2254 740.00 CR

Applicant respectfully requests reconsideration of the Decision on the Petition to Revive under 37 CFR 1.137(b) ("Petition Decision") mailed by the Petitions Office on August 4, 2003, which dismissed the Petition to Revive under 37 CFR 1.137(b) filed by Applicant on July 28,

11/12/2003 SLUANG1 00000062 502040 09904179

01 FC:2254 740.00 DA

11/12/2003 SLUANG1 00000024 502040 09904179

01 FC:2453 665.00 DA

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2003 ("Petition to Revive"). In response to the Petition Decision, having a two month period for response which expired October 4, 2003, Applicant respectfully submits the following:

- A) Petition for an Extension of Time for one (1) month;
- B) A copy of the Petition Decision;
- C) A Fee Transmittal authorizing payment of \$1195.00, as itemized below;
- D) A copy of the original Petition for Revival submitted July 18, 2003, including:
 - i) Petition for Revival of an Application for Patent Abandoned Unintentionally under 37 CFR 1.137(b);
 - ii) Response to Office Action;
 - iii) Petition for Extension of Time for three (3) months;
 - iv) Transmittal Form; and
 - v) Fee Transmittal Form

Incorrect Deposit Account Number

The Petition Decision dismissed the Petition to Revive for failure to pay the petition fee as set forth in 37 CFR 1.137(m) due to insufficient funds in Applicant's deposit account. The Petition Decision indicated that the account to be charged was Deposit Account No. 60-2040. However, Applicant's Deposit Account is No. 50-2040, as indicated in both the submitted Fee Transmittal and the Petition for Extension of Time forms. If this was a processing error on the part of the Patent and Trademark Office, Applicant respectfully requests a reconsideration of the decision to dismiss Applicant's Petition to Revive.

Insufficient Funds

In the event that the correct Deposit Account (No. 50-2040) was in fact insufficient when charged, Applicant has corrected this unintentional oversight. In light of this, and believing that Applicant's Petition was not deficient in any other way, Applicant respectfully requests a reconsideration of the decision to dismiss Applicant's Petition to Revive, based on the payment authorization set forth here below.

Applicant is submitting herewith a Fee Transmittal authorizing payment of \$1195.00 via Deposit Account 50-2040 in the name of NuVasive, Inc. (Customer No. 30328), the assignee of the present application. This payment includes the following:

- A) \$55.00 fee for the Petition for One Month Extension of Time under 37 CFR 1.136(a) pertaining to the current Renewed Petition under 37 CFR 1.137(b);
- B) \$475.00 fee for the Petition for Three Month Extension of Time under 37 CFR 1.136(a) pertaining to the previously dismissed Petition for Revival of an Application for Patent Abandoned Unintentionally under 37 CFR 1.137(b);
- C) \$665.00 fee for the previously dismissed Petition for Revival of an Application for Patent Abandoned Unintentionally under 37 CFR 1.137(b).

No other fees are deemed necessary with this renewed petition. However, in the event there are any additional fees to be charged or payments to be credited the applicant hereby

request that any charges or credits be made Deposit Account No.: 50-2040 for Customer No.:

30328. In the event that there are any questions concerning the remarks above or the application in general, the Examiner is cordially invited to telephone the undersigned attorney so that prosecution may be expedited.

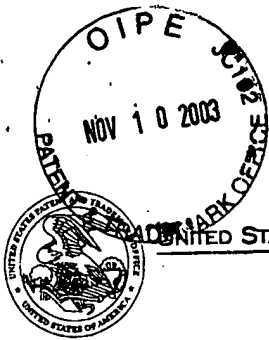
Respectfully submitted,
NUVASIVE, INC.

By: 

Jonathan Spangler, Esq.
Registration No. 40,182

10065 Old Grove Road
San Diego, CA 92131
Tel.: (858) 243-0029

November 3, 2003



050US1

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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Paper No. 10

NUVASIVE INC
10065 OLD GROVE ROAD
SAN DIEGO, CA 92131

COPY MAILED

AUG 04 2003

In re Application of
Dan K. Ahlgren
Application No. 09/904,179
Filed: July 11, 2001
Attorney Docket No. 5510US

: OFFICE OF PETITIONS
:
: ON PETITION
:
:

This is a decision on the petition under 37 CFR 1.137(b), filed July 28, 2003, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." Petitioner is advised that this is **not** a final agency action decision.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed October 1, 2002, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on January 2, 2003.

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: (1) the required reply (unless previously filed), which may met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute, but must be the payment of the issue fee or any outstanding balance thereof in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)). This petition lacks item (2) above.

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Application No. 09/904,179

CORRECT ACCOUNT
50-2040

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As to item (2), petitioner authorized that the petition fee be charged to Deposit Account No. (60-2040). Unfortunately, there were insufficient funds in the Deposit Account. Accordingly, the petition must be dismissed.


Further correspondence with respect to this matter should be addressed as follows:

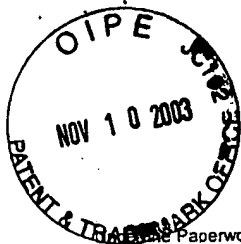
By mail: Mail Stop PETITION
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: Crystal Plaza Four, Suite 3C23
2201 South Clark Place
Arlington, VA 22202

By fax: (703) 308-6916
Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to Wan Laymon at (703) 306-5685.


Wan Laymon
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy



PTO/SB/64 (05-03)

Approved for use through 04/30/2003. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)

050US1

First named inventor: **DAN AHLGREN**Application No.: **09/904,179**Art Unit: **3751**Filed: **07-11-2001**Examiner: **A. RAMANA**Title: **STACKABLE INTERLOCKING INTERVERTEBRAL SUPPORT SYSTEM**

Attention: Office of Petitions

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

FAX: (703) 308-6916

NOTE: If information or assistance is needed in completing this form, please contact Petitions
Information at (703) 305-9282.

The above-identified application became abandoned for failure to file a timely and proper reply to a
notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the
expiration date of the period set for reply in the Office notice or action plus an extensions of time
actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee --required for all utility and plant applications
filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee

☒ Small entity-fee \$ 650.⁰⁰ (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.☐ Other than small entity - fee \$ _____ (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in **AND RESPONSE TO OFFICE ACTION**
the form of 3 MONTH EXTENSION (\$465.⁰⁰) (Identify type of reply):

- ☐ has been filed previously on _____
☒ is enclosed herewith.

B. The issue fee of \$ _____

- ☐ has been paid previously on _____
☐ is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

3. Terminal disclaimer with disclaimer fee

- ☐ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D))].

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

18 JULY 2003
Date

Telephone
Number: 858-527-1936

[Signature]
Signature

JONATHAN SPANGLER
Typed or printed name

ATTY. REF. # 49182

NUVASIVE, Inc. - 10065 OLD GROVE RD.
Address

SAN DIEGO, CA 92131
Address

- Enclosures: ☒ Fee Payment
- ☒ Reply
- ☐ Terminal Disclaimer Form
- ☐ Additional sheets containing statements establishing unintentional delay
- ☒ Other: POSTCARD

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

- ☒ deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents,
P.O. Box 1450, Alexandria, VA 22313-1450.
- ☐ transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (703) 308-6916.

18 JULY 2003
Date

[Signature]
Signature

JONATHAN SPANGLER
Type or printed name of person signing certificate